



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0890]

RIN 1625-AA00

Safety Zone; Highway 99 Partial Bridge Replacement, Stanislaus River, Ripon, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Stanislaus River. This action is necessary to provide for the safety of life on the Stanislaus River near the Highway 99 Bridge in Ripon, CA, during partial bridge replacement scheduled to occur between June 15, 2020 and November 7, 2020. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port San Francisco or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2019-0890 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY**

INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Jennae Cotton, Waterways Management, U.S. Coast Guard; telephone 415-399-3585, email SFWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port San Francisco
DHS	Department of Homeland Security
NPRM	Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On October 18, 2019, the California Department of Transportation notified the Coast Guard that it will be conducting partial bridge replacement of the Highway 99 Bridge in Ripon, CA, from June 15, 2020 to November 7, 2020. Approximately 200 feet of the existing concrete, double-arch bridge on Southbound Highway 99 over the Stanislaus River will be demolished, removed, and replaced. Bridge construction hazards include reduced bridge clearance and the potential for falling debris, such as steel beams and other construction materials from demolition and crane operations. The COTP has determined that potential hazards associated with the partial bridge replacement would be a safety concern for anyone within the Stanislaus River around or under the bridge construction project.

The purpose of this rulemaking is to ensure the safety of vessels and mariners in the navigable waters surrounding the Highway 99 Bridge in Ripon, CA during construction. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C.

70034.

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone surrounding the Highway 99 Bridge in Ripon, CA from June 15, 2020 through November 7, 2020. The safety zone would encompass all navigable waters of the Stanislaus River, from surface to bottom, between the Union Pacific Railway Bridge to the west and the Stanislaus River pedestrian crossing bridge to the east of the Ripon Highway 99 Bridge, within the area formed by connecting the following approximate latitude and longitude points in the following order: 37° 43' 47.7" N, 121° 06' 36.0" W, thence to 37° 43' 49.9" N, 121° 06' 38.6" W, thence to 37° 43' 51.3" N, 121° 06' 36.1" W, thence to 37° 43' 49.2" N, 121° 06' 33.6" W (NAD 83), and thence to the point of beginning; or as announced via Broadcast Notice to Mariners.

This safety zone is intended to ensure the safety of mariners, vessels, and the navigable waters during the bridge construction project. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the location of the safety zone. Vessel transits in the area are limited to recreational vessels and personal watercraft including small recreational vessels used for fishing, kayaks, and inner tubes. Notice would be provided to mariners via Notice to Mariners and posted at the construction site and adjacent river entry locations 30 days in advance.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator. Notice

will be provided 30 days in advance of the safety zone. River entry and exit points will be identified on both sides of the safety zone, and markers will provide mariners with clear instruction throughout the duration of the project. Depending on operations and river level parameters, mariners will be provided a transit lane on weekends between July 25, 2020 and November 7, 2020.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is

one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone that would prohibit entry to the area surrounding the bridge construction site and would last approximately five months with intermittent weekend openings. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using

<https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T11-019 to read as follows:

§165.T11-019 Safety Zone; Highway 99 Partial Bridge Replacement, Stanislaus River, Ripon, CA

(a) *Location.* The following is a safety zone: the navigable waters of the Stanislaus River, from surface to bottom, between the Union Pacific Railway Bridge to the west and the Stanislaus River pedestrian crossing bridge to the east of the Highway 99 Ripon Bridge, within the area formed by connecting the following approximate latitude and longitude points in the following order: 37° 43' 47.7" N, 121° 06' 36.0" W, thence to 37° 43' 49.9" N, 121° 06' 38.6" W, thence to 37° 43' 51.3" N, 121° 06' 36.1" W, thence to 37° 43' 49.2" N, 121° 06' 33.6" W (NAD 83), and thence to the point of beginning; or as announced via Broadcast Notice to Mariners.

(b) *Definitions.* As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart B of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone

through the 24-hour Command Center at telephone (415) 399-3547.

(d) *Enforcement period.* This section will be enforced from June 15, 2020 through November 7, 2020.

(e) *Information broadcasts.* The COTP or the COTP's designated representative will notify the maritime community of periods during which this zone will be enforced in accordance with 33 CFR 165.7. Additionally, signage will be posted beginning 30 days prior to the start of the project and will remain posted for the duration of the project. River markers will be provided on the Stanislaus River on each side of the safety zone to direct mariners.

Dated: March 9, 2020

Howard H. Wright
Captain, U.S. Coast Guard
Alternate Captain of the Port, San Francisco.
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